

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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| THEODORE W. HIDGON, |) | Case No. 1:18-cv-2447 |
| |) | |
| Petitioner |) | Judge Dan Aaron Polster |
| |) | |
| v. |) | <u>OPINION AND ORDER</u> |
| |) | |
| DAVID W. GRAY, |) | |
| |) | |
| Respondent. |) | |
| |) | |

Before the court is the Report and Recommendation of Magistrate Judge James R. Knepp II in the above-entitled action (Doc. # 12). Pending is a petition for a writ of habeas corpus filed pursuant to Title 28, United States Code section 2254. Respondent has filed an answer/return of writ and has moved to dismiss the petition.

In a well-written, thorough opinion, the Magistrate Judge examined each of Petitioner's thirteen claims for relief and concluded that the Respondent's motion to dismiss Theodore W. Higdon's habeas corpus petition be granted on the basis that: 1) the Petitioner has not shown entitlement to equitable tolling; 2) the attached journal articles regarding DNA testing fail to show the Petitioner is actually innocent; and 3) the Petitioner's conviction was also supported by the victim's own testimony, and therefore the Petitioner does not satisfy the standard of showing that no reasonable juror would find him guilty beyond a reasonable doubt. Petitioner has filed Objections to the Magistrate Judge's Report and Recommendation (Doc. # 14).

The Court has reviewed the Magistrate Judge's Report and Recommendation and agrees with the conclusions therein. Higdon's objection still fails to articulate an extraordinary

circumstance, other than difficulty of accessing the law library or reliance on advice of inmate law clerks, that would justify equitably tolling the statute of limitations, and he has failed to explain why he waited 22 months after the state court proceedings concluded to return to federal court. The Court hereby **OVERRULES** Petitioner's Objections (Doc. # 14) and adopts the Report and Recommendation in full. Respondent's motion to dismiss the petition is **GRANTED**.

Accordingly, the Petitioner's motion for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED**.

IT IS SO ORDERED.

/s/ *Dan Aaron Polster Sept. 18, 2019*
Dan Aaron Polster
United States District Judge